HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT PETITION No. 26239 OF 2005

BETWEEN:

K. Balakrishna

.....**Petitioner**

And

The Debts Recovery Tribunal,
5th Floor, Triveni Complex,
Abids, Hyderabad & others.

.....**Respondent**

::O R D E R::

Counsel for the petitioner : Shri M.L. Prasad

Counsel for Respondent No.2 : Shri K.B. Ramanna Dora

Dated: 19.06.2006

Per G.S. SINGHVI, CJ

This is a petition for quashing order dated 07.10.2005 passed by Debts Recovery Tribunal, Hyderabad Bench (for short 'the Tribunal') in S.A.No.14 of 2004 and also the sale conducted by State Bank of India (for short 'the Bank') for realization of its dues.

In the affidavit filed by him, the petitioner has averred that he purchased semi-finished flat No.307, Prameela Towers, Kakaguda, Secunderabad from M/s Siri Constructions vide registered sale deed dated 25.09.2000. For the purpose of purchasing the flat, he applied to the Bank for sanction of a term loan of Rs.6,00,000/-, which was duly sanctioned. It has been further averred that even though the terms of agreement entered with the builder postulated disbursement of loan by the Bank in instalments subject to the stage-wise completion of constructiion work, the Bank authorities released the entire loan amount ignoring the fact that the builder had not taken steps to complete the construction work. Still further, it has been averred that even though notice issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') was not served on him, the Bank resorted to the provisions of Section 13(4) of the Act and tried to dispose of the property and the Tribunal dismissed the application filed under Section 17 of the Act without assigning cogent reasons.

Shri M.L. Prasad, learned counsel for the petitioner assailed the order of the Tribunal by arguing that the reasons assigned it for refusing to entertain the application filed by the petitioner under Section 17 of the Act are legally untenable. Shri Prasad submitted that while dismissing the petitioner's application, the Tribunal completely overlooked the fact that notice issued

under Section 13(2) of the Act had not been served on the writ petitioner. He emphasized that service of notice issued under Section 13(2) of the Act constitutes a condition precedent to the taking of action under Section 13(4) of the Act and as the Bank failed to comply with this condition, the Tribunal should have annulled the notice issued under Section 13(4) of the Act and further action taken by the Bank for disposal of the property.

Shri K.B. Ramanna Dora, learned counsel for respondent No.2 argued that the writ petition should be dismissed because the petitioner has failed to avail the statutory alternative remedy of appeal in terms of Section 18 of the Act.

We have thoughtfully considered the respective arguments. In our opinion, the writ petition is liable to be dismissed on the ground of availability of an effective alternative remedy to the petitioner, which he has failed to avail. The question whether the High Court should entertain a petition under Article 226 of the Constitution despite the fact that an effective alternative remedy is available to the petitioner has been considered by the Supreme Court in a large number of cases. In **A.V. Venkateshwaran v. R.S. Wadhwani**[1] the Constitutional Bench of the Supreme Court while reiterating the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, exhaust the other remedies open to him under the law is not one which bars the jurisdiction of the High Court to entertain the petition but is a rule evolved by the Courts for the exercise of their discretion, observed as under:

> " The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Art.226 of the Constitution unless (1) there was a complete lack of

jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est and that in all other cases, Courts should not entertain petitions under Art. 226, or in any event not grant any relief to such petitioners cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court."

In **Thansingh Nathmal v. Superintendent of Taxes**[2] another Constitutional Bench of the Supreme Court considered the question relating to exercise of discretion by the High Court in entertaining a writ petition despite the availability of alternative remedy and held:

"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226,

where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

In **Baburam v. Zilla Parishad**[3] the Supreme Court reiterated the rule of alternative remedy in the following words:

"When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted."

Their Lordships carved out the following two exceptions to the rule of alternative remedy:

1) where proceedings are taken before a Tribunal under a

provision of law, which is ultra vires to the Constitution,

2) where the impugned order has been made in violation of the rules of natural justice.

In **Champa Lal v. I.T. Commissioner**[4], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[5], **C.I.T. v. Ramendra Nath Ghosh**[6], **Swadeshi Cotton Mills Co. Ltd., v. Government of U.P.**[7], **Gujarat University v. N.U. Rajguru**[8], **State of H.P. v. Raja Mahendra Pal**[9], **L.L. Sudhakar Reddy v. State of A.P.**[10], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[11], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[12], **ABL International Ltd., v. Export Credit Guarantee Corporation of India Ltd.,**[13] the Supreme Court applied the rule of alternative remedy in different situations. In **Harbanslal Sahnia**[12] (supra) the Supreme Court considered the situations in which the High Court can exercise under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

> "The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: *i*) where the writ petition seeks enforcement of any of the fundamental rights; (*ii*) where there is failure of principles of natural justice; or (*iii*) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See ***Whirlpool Corpn.* v. *Registrar of Trade Marks {(1998) 8 SCC 1}***. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants

should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

In **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[14] the Supreme Court stated the rule of alternative remedy in the following words:

> " Where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute alone must be availed of. Under the scheme of the Orissa Sales Tax Act, there is a hierarchy of authorities for granting redress. The petitioners had an equally efficacious alternative remedy by way of an appeal to the Prescribed Authority under sub-section (1) of Section 23, then a second appeal to the Tribunal under sub-section (3)(a) thereof, and thereafter in the event the petitioners get no relief, to have the case stated to the High Court under Section 24 of the Act. The Act provides for an adequate safeguard against an arbitrary or unjust assessment, such as right to prefer appeal under Section 23 (1) and to apply for stay of recovery under clause (a) of the second proviso to Section 13 (5). Thus the Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226.

Since the Act is a special legislation enacted for the purpose of expeditious recovery of the dues of Banks, other financial institutions and secured creditors and Sections 17 and 18 provide for filing of application and appeal by the aggrieved person, the remedy available to the petitioner under Section 18 of the Act must be treated as an effective alternative remedy and we do not see any reason for making a departure from the settled rule that the High Court will not entertain a petition under Article 226 of the Constitution, if an effective alternative remedy is available to the petitioner.

For the reasons stated above, the writ petition is dismissed leaving the petitioner free to avail the remedy of appeal in terms of Section 18 of the Act.

G.S. SINGHVI, CJ

G. V. SEETHAPATHY, J

19.06.2006
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[1] AIR 1961 SC 1506
[2] AIR 1964 SC 1419
[3] AIR 1969 SC 556
[4] AIR 1970 SC 645
[5] AIR 1970 SC 1980
[6] (1972) 4 SCC 379
[7] (1975) 4 SCC 378
[8] AIR 1988 SC 66
[9] (1999) 4 SCC 43
[10] (2001) 6 SCC 634
[11] (2002) 1 SCC 216
[12] (2003) 2 SCC 107
[13] (2004) 3 SCC 553
[14] (1983) 2 SCC 433